RIBA AND ITS PROHIBITION IN ISLAM

Dr Engku Rabiah Adawiah Engku Ali
International Islamic University Malaysia

"But Allah has permitted trade and forbidden riba.."[1]

1.0 INTRODUCTION

The Federal Shariah Court of Pakistan in a recent case, Mahmood ur Rahman Faisal v Secy. Miny. of Law[2] held that *riba* is unlawful and thus; made an order that all banks in Pakistan adopt Islamic principles in eliminating all elements of *riba* from its operation. The Federal Shariah Court also resolves that:

(a) Any excess of profit on a loan for a deferred payment when the borrower is unable to repay it after the fixed period and similarly any excess or profit on a loan at the time of contract, both are *riba* forbidden in *Shari'ah*;

(b) The alternate banks should be established according to the injunctions of Islam to provide economic facilities;

(c) The Academy resolved to request all the Islamic countries to establish banks based on *Shari'ah* principles to fulfil all the requirements of a Muslim accord his beliefs so that he may not face any repugnancy.

From the above decision, evidently the main element to be eliminated in the present banking system in order to make it conform to the prescription of the *Shari'ah* is riba. Hence, it is indispensable that the nature and rules pertaining to *riba* be clearly defined. This chapter discusses the nature of *riba*, its prohibition in the *Quran* and *Sunnah*, and, the juristic opinions and differences

1. *Al Baqarah:* part of ayah 275.
2. *FSC, 1992, p.89*

around the prohibition of *riba*.

2.0 THE MEANING OF *RIBA*

Literally, the word *riba* means excess [3], increase, augmentation, expansion or growth. The word means increased and mean the addition to a thing. An elevated place or hill is called because of its 'superiority' (or increase) in height in comparison with the ad.jacent places.[4] The *Quran* also uses the *riba* in this sense, for example in *Surah al Haj* part of *ayah* 5 which reads:

"And (further), you see the earth barren and lifeless, but when We pour down rain on it, it is stirred (to life), it swells, and it puts forth every kind of beautiful growth (in pairs)."

Muslim writers give various definitions to the term *riba*. Basically, it is used to denote a specific kind of excess.

This excess originates either in the thing itself, or an increase in an exchange or sale of money as the sale of one *dirham* for two *dirhams*, or of commodities as in cases of barter of a measure for more of the same merchandise.[5]

Ibn Hajar al Asqalani held that the essence of *riba* is excess whether it is in the commodity itself or in money[6]. Abu Bakr Ibn al 'Arabi held that every excess in return of which no reward is paid is *riba*.[7]

Abu al A'la al Mawdudi[8] defined *riba* as "a predetermined excess or surplus over and above the loan received by the creditor conditionally in relation to a specified period". This definition entails that *riba* contains the following three elements:

(a) excess or surplus over and above the loan capital;

---

3. *Abu Abdullah Muhammad Al Qurtubi, "Al Jami' li Ahkam al Quran", Vol. 3, p. 348.*
4. *Abd. Al Mun'im Mahmud al Qusi, "Riba, Islamic Law and Interest", a Ph.D dissertation, Temple University,1982, p.121.*
5. Ibid. p.p. 121-122.
6. Quoted by Afzal ur Rahman, "Economics Doctrine of Islam", Islamic Publications Ltd., Lahore, 3rd Edition, 1986, Vol. III, p. 69.
7. Ibid
8. Abu al A'la al Mawdudi, "Interest", Vol. 1, p. 33; Afzal ur Rahman, Ibid. p. 71.

(b) determination of this surplus in relation to time;

(c) stipulation of this surplus in the loan agreement

Ataul Haque defined *riba* as "an increase or excess which, in an exchange or sale of a commodity, accrues to the owner (lender) without giving in return any equivalent counter or recompense to the other party."

From the above definitions, we can conclude that there are actually two distinguishable types of excess, i.e., the excess accruing from a loan transaction in e to time; and the excess accruing in a sale or barter transaction. These two types of excess are termed by the jurists as *riba al nasiah* and *riba al fadl* respectively. Both of the types of *riba* will be dealt with the discussion regarding the prohibition of riba in the *Quran*, *Sunnah* and *fiqh*.

For the purpose of our study, we may adopt a standard definition for the term *riba* whereby it is defined as an increase or excess which accrues to the owner in an exchange or sale of a commodity, or, by virtue of a loan arrangement, without giving in re equivalent counter value to the other party.[9]

3.0 THE DIFFERENCE BETWEEN *RIBA* AND TRADE

Riba is different from trade, though, the difference may be very fine. Fine as it may, one is to be distinguished from the other since the *Quran* itself declared such distinction, attributing one with prosperity and blessings, and the other with wrath and war.

The jurists hold that, unlike *bay'* (trade), *riba* implies that money is loaned for self-generating or self-expanding value which is not a form of sale. For them, this growth increase of money is inequitable. In *bay'*, there is purchase and sale which is a lawful economic activity, a productive movement, something is exchanged for something, such as money for goods or simply goods for goods, In money-lender's capital, which is loan, there is no such legal or

9. Ataul Haque; quoted by Shahrukh Rafi Khan, "Profit and Loss Sharing", Oxford University Press,

moral relationship mediating any commodity except that here capital is loaned for an increase in itself. It is the capacity of money to increase its own value without the economic activity of sale. This is the point which the *Quran* so clearly makes when it refutes the theory of money-lenders that *riba* is similar to bay'[10].

Riba is of its very nature an invalid exchange because one party receives an increase without giving to the other party an equivalent return. This unearned increment is the root of injustice and exploitation because it enriches the class of money-lenders who accumulate wealth by impoverishing others.[11]

Abu al A'la al Mawdudi[12] gave four fundamental differences between trade and *riba*, i.e.:

(a) In trade the purchaser and vendor exchange on the basis of equality, for the purchaser derive profit from that which he has purchased from the vendor, while the latter gets profit in consideration of the labour and time which he spends in procuring that commodity for the purchaser. In interest-transactions there is no division of profits between the two parties on the basis of equality. The creditor gets for himself a definite amount of money for his loan, but all the debtor gets is certainly the time to use the money, whilst time does not necessarily procure him profit.

(b) In trade, however great a profit the vendor might demand from the purchaser, he does so only once. In interest dealings, the creditor does not cease to demand his interest (as long as the principal is not returned).

(c) In trade, the moment a commodity is exchanged for its price, the transaction comes to an end. The purchaser does not give anything after that transaction to the vendor. In hire transactions, whether of house, land, or other material, the original remains intact and is

1987, p. 45

10. Abd. Al Mun'im Mahmud al Qusi, op. cit. p. 125
11. Ibid
12. Abu al A'la al Mawdudi, "The Meaning of the Quran", Vol. I, p.p. 201-205, and simplified by the writer where necessary.

returned to the owner afterwards. It is only for the usufruct of it (use and fruit) that the hirer has to pay rent to the owner. In the case of interest, the debtor actually spends the amount borrowed from the creditor and has to return the same amount with an addition by way of interest.

(d) In trade, professions and crafts, a person derives benefit after undergoing labour, hardship, or by his skill or art. In interest-transactions, he only lends out his surplus amount and becomes, without any personal labour or hardship, a prominent partner in the earnings of his debtor.

It should be clear from the above discussion that *riba* is different from *bay'*. The *Quran* in unambiguous terms puts *bay'* against the concept of *riba*, allowing the former while prohibiting the latter.

4.0 *RIBA* IN THE QURAN

The prohibition of riba appears in the *Quran* in four separate revelations. These revelations constitute the four stages of the prohibition which are as follows:

4.1 First Stage

We read in Surah *al Rum*: 39 to the effect:

"That which you lay out for increase through the property of (other) people, will have no increase with Allah; but that which you lay out for charity seeking the countenance of Allah (will increase); it is these who will get a recompense multiplied".

This *ayah* draws a comparison between those who give money to get an increase (*riba*) there from, and those who gives alms seeking for Allah's pleasure; whereby, the former is deprived the wealth of Allah's blessings whilst the latter gets it manifold.

This *ayah*, being a Meccan *ayah* (*makkiyyah*), worked as a motive for

people at the earlier stage of Islam to abolish loans with a view of interest (*riba*). In the alternative, it encouraged the giving of alms and charity.

Sami Hassan Hamoud[13] said that the aim behind the *ayah* is the "awakening of the live souls", addressing the people who have not been aware so far that such gain from usury is to be interdicted. He observed that the word used in the *ayah* is 'give' which equalises eloquently the two cases of usury and *zakah*, but the former is said to be not worth of any credit from Allah, whilst the latter is bound to grow and multiply.

However, there were several interpretations of the word *riba* used in the *ayah*. Some interpreters said that what is meant is not the banned usury, but the grant which is not intended for Allah's sake, such as where a man gives a a present to another anticipating to obtain in return a better present, or the grant made by a man to one of his relation, not for Allah's sake, but for profit.[14]

Others view that the word refers to the banned usury. Al Alusi, for instance, said that the apparent meaning of usury in the *ayah* is "the increase known in dealings which are banned by the *Shariah*".[15] Contemporary Muslim thinkers tend to agree with the latter interpretation, particularly as it does not contradict the absoluteness of the *ayah* on the assumption that it covers "all means by which its users wish in any form to multiply their property (monies) upon usury".[16]

13. Sami Hassan Hamoud, "Islamic Banking", Arabian Information, London, 1985, p. 66.
14. Ibid., this is the preferred view among commentators especially Ibn Jarir al Tabari because of the clear connotation of the verse, whereby, the Quran always uses the word 'devour' (*al akl*) in connection with riba, and the word 'give' (*ataytum*) in connection with the act of donating.
15. Shihab al Din al Alusi al Baghdadi, "The Essence of Meanings in Interpreting the Great Quran"; Sami Hassan Hamoud, op. cit. p. 66; see also Al Qurtubi, op. cit., Vol. 14, p.p. 36-39.

4.2 Second Stage

"For the iniquity of the Jews We made unlawful for them certain (foods) good and wholesome which had been lawful for them in that the hindered man from Allah's way that they took usury, though they were forbidden; and that they devoured men's subtonic wrongfully; We have prepared .for those who reject faith a grievous punishment. "

These *ayat* were revealed in the early Madinah period. They condemned the practice of rib a in stronger terms by attributing it to the practice of the people of the book (jews) which is considered as a form of iniquity. Also, in *ayah* 161 placed those taking *riba* in juxtaposition with severe punishment from Allah.[17]

In this *ayah* a stronger expression was used, i.e. 'take' instead of 'give' which was used in the preceding ayah in *Surah al Rum*. This is to connote the graduation in prohibition.[18]

In interpreting this *ayah*, At Tabari said, *"the order of heaven is one and the same; that the usury which was banned to the jews is the same usury which is banned to the people of Islam".* He also said that the usury which was banned to the jews is proximate to the pre-Islamic usury in that both concerned the taking of the surplus to the sum of the capital in consideration for extension of the term after maturity. [19]

4.3 Third Stage

Ali 'Imran: 130 reads to the effect:

"O you who believe! Devour not usury doubled and multiplied; but fear Allah; that you may (really) prosper."

This *ayah* as revealed around the second or third year after *Hijrah*,

---

16. Sayyid Qutb, "Fi Zilal al Quran", Dar al Syuruq, 1981, Vol. 5 p. 2772.
17. Muhammad Umer Chapra, "Towards a Just Monetary System", op. cit., p. 56.
18. See Sami Hassan Hamoud, op. cit. p. 67.

enjoining Muslims to keep away from *riba* if they desired their own welfare.[20] It may be noted that there is a graduation in the strength of the word used, i.e. 'devour'; any person who apprehends the impression created by this word on the Arabs, who were disgusted if one was described us a glutton, will comprehend fully the strength of the ban intended in the message.

Apparently, it emphasises the prohibition of usury and excessive interest, not non-excessive or normal interest. This apparent meaning was refuted by Mahmud Shaltut by saying:

“This is null and void because when Allah said “ “, He was in fact reproaching them for their actions and exposing and denouncing their evil deeds. The same approach is followed when the Quran dealt with the problem of prostitution: "But force not your maids to prostitution when they desire chastity, in order that you may make a gain in the goods of this life". The purpose here is not to prohibit the act of forcing maids to become prostitutes when they desire to remain chaste, and permit this act when they desire not to stay chaste, but Allah is repudiating and denouncing their actions, which is exactly the same approach taken in the case of al riba.”[21]

Interpreters generally agreed that the expression 'multiples' is not to restrict the ban but to express the usury: they were accustomed to practise. To quote Sayyid Qutb, the phrase 'multiple of multiples' is *"no more than a description of a state of affairs and not a condition relevant to the imposition"*.[22] He also said in this connection that:

"It is inconceivable for a man who believes in Allah and the Day of Judgment to hide himself- behind this text and say that the prohibition is related only to the 'multiples of multiples', while the four percent, the five percent, the seven, or nine percent is not 'multiples of multiples'

19. Al Tabari; quoted by Sami Hassan Hamoud, ibid. p. 68.
20. M. Umer Chapra, op. cit., p. 56
21. Mahmud Shaltut; quoted by Abd. Al Mun’im Mahmud al Qusi, op. cit. p.p. 138-139.
22. Sayyid Qutb, op. cit. Vol. 1, p.473.

and hence is not prohibited. "[23]

It is clear that both *ayat* in this *Surah* call for the prohibition of all forms of *riba*. In any case, this is not the formal revelation which may be said to lay down the strict law regarding *riba*. The strict law regarding *riba* is laid down decisively in the fourth stage of prohibition.

4.4 Fourth Stage

We read in *al Baqarah*: 275-281 to the effect:

"Those who devour usury will not stand except as stands one whom the evil one b-v his touch has driven to madness. That is because they say: 'Trade is like usury, but Allah has permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past," their case is for Allah (to judge); but those who repeat (the offence) are companions" of the fire: they will abide therein (forever). Allah will deprive usury of all blessings, but will give increase for deeds of charity: for He loves not creatures ungrateful and wicked. Those who believe, and do establish regular prayers and regular charity, will have their reward with their Lord: on them shall be no fear, nor shall they grieve. O you who believe! Fear Allah and give lip what remains of your demand for usury if you are indeed believers', If you do if not, take notice of war from Allah and His Messenger: but if you turn back, you shall have your capital sums: deal not unjustly, and you shall not be dealt with unjustly. If the debtor is in a difficulty, grant him time till it is easy for him to repay. But if you remit it by way of charity, that is' best for you if you only knew. And fear the Day when you shall be brought back to Allah. Then shall be every soul be paid what it earned, and none shall be dealt with unjustly. "

The revelation occurred near the completion of the Prophet's mission. It severely censured those taking *riba*. It established a clear distinction between trade and *riba*. It required Muslims to annul all outstanding

23. Ibid.

riba, instructing them to take only the principal amount, and forego even this in case of the borrowers' hardship.[24]

It is obvious that the ayat confirm the ban of usury already imposed in the preceding *ayah* in *Surah Ali 'Imran*, and cite the consequences of disobedience which will be met in this world and the next.

The text of the ayah in *Surah al Baqarah* also defines the prohibited *riba*, i.e. as any increment added to the principal. This means that any extraneous addition, however small the amount, is considered to be *riba*, and the lender should receive only the principal. The *Quranic* text prohibits completely and without any doubts all rates and causes of *riba*. Thus, any accrued amount added to the principal is unlawful whatever the reasons were for the incurrance of the debt.[25]

4.5 Explanation About the *Riba* Prohibited in the Quran

The *riba* which is prohibited by the *Quran* is called *Riba al Duyun*, or *Riba al Jahili*, or *Riba al Nasiah*. Some of the followers of the Prophet consider it as the only type of *riba* which is prohibited in Islam. They depend on the saying related to fun Abbas after Usamah ibn Zaid which reads to the effect:
"There is no riba except riba al Nasiah"[26]

This argument has also been said by Zaid bin Arqam, at Bara' bin Azib, and Ibn at Zubayr; among the companions of the Prophet.[27]

Ibn Qayyim al Jawziyyah, calls this type of *riba* as *al Riba al Jaliyy* (obvious *riba*), distinguishing it from another type which he calls *al Riba al Khafiy* (concealed *riba*). He says that *riba al jaliyy* or *riba al nasiah* was practised by the pagan Arabs who used to defer the due date in exchange for an increment added to the principal. The longer

24. M. Umer Chapra, op. cit. p. 56.
25. Abd. Al Mun'im Mahmud al Qusi, op. cit. p. 141.
26. Narrated by Bukhari and Muslim.

the period of the loan, the more one received in return, until the principal is doubled or multiplied.[28]

In this connection, Abu Zahrah says that these texts indicate the following:

a. Linguistically, the word *al Riba* has been used by the Arabs to denote the increment in the loan in exchange for time. This kind of *riba* has been prohibited by the *Quran*. The Prophet described this type of *riba* as *al riba al jahili*. Jurists as well as non-jurists are not in a position to suggest that the linguistic meaning of .the word is obscure, or the real meaning cannot be defined because the meaning has been determined by the language, and the *Quranic* text in ayah 2:279 specifies it by "but if you turn back, you shall have your capital sums".
b. There is a consensus among scholars that that the accrued amount which is added to the capital in exchange for time is a! riba which falls under the text of the Quran. Thus, anyone who rejects it undoubtedly rejects a basic religious fact which necessarily became known to him.[29]

5.0 *RIBA* IN THE SUNNAH

There are many narrations regarding the prohibition of *riba* in the *Sunnah*. It suffices to mention a few of these narrations in this paper. Among these narrations are the prohibition of *riba* in general, and the prohibition of specific types of *riba* that are *riba al nasiah* and *riba al fadl*.

5.1 Prohibition of *Riba* in General

"From Jabir: The Prophet, may peace be on him, cursed the receiver and the payer of interest, the one who records it and the two

27. Muhammad Abu Zahrah, "Tahrim al Riba Tanzim Iqtisadi", Kuwait, Maktabah al Manar, p. 22.
28. Ibn Qayyim al Jawziyyah, "I'lam al Muwaqqi'in 'an Rabb al ' Alamin", 1st Edition, al Maktabah al Tiariyyah al Kubra, Cairo, Vol. II, p. 99.
29. Abu Zahrah, op. cit. p. 23.

witnesses to the transaction and said: "They are all alike (in guilt)".[30]

5.2 Prohibition of *Riba al Nasiah*

- *"From Usamah bin Zaid: The Prophet s.a.w. said: "There is no riba except in nasiah (waiting)".*[31]
- *"From Anas bin Malik: The Prophet s.a.w. said: "When one of you grants a loan and the borrower offers him a dish, he should not accept it; and if the borrower offers a ride on an animal, he .5hou/d not ride, unless the two of them have been previously accustomed to exchanging such favours mutually".*[32]
- *"From Anas bin Malik: The Prophet s.a.w. said: "If a man extends a loan to someone he should not accept a gift".*[33]

5.3 Prohibition of *Riba al Fadl*

- *"From Abu Said al Khudri: The Prophet s. a. w. said: "Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt, like for like, and hand-to-hand. Whoever pays more or takes more has indulged in riba. The taker and the giver are alike (in guilt).*[34]
- *"From Abu Said at Khudri. The Prophet s.a.w. said: for gold except when it is like for like, and do not increase one over the other; do not sell silver for silver except when it is like for like, and do not increase one over the other, and do not sell what is away (from among these for what is ready*" [35]
- *"From Ubadah bin al Sami: The Prophet s.a.w. said: "Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt -like for like, equal for equal, and hand-to-*

---

30. Muslim, "Kitab al Musaqat", also in Tirmizi and Musnad Ahmad; translation by M. Umer Chapra, op. cit. p. 236.
31. Bukhari, "Kitab al Buyu", also in Muslim and Musnad Ahmad; translation by M. Umer Chapa, ibid.
32. Sunan al Bayhaqi, "Kitab al Buyu' ", translation by M, Umer Chapra, ibid.
33. Mishkat, on the authority of Bukhari's "Tarikh", and Ibn Taymiyyah's "Al Muntaqa"; translation by M. Umer Chapra, ibid.
34. Muslim and Musnad Ahmad; translation by M. Umer Chapra. ibid.
35. Bukhari, "Kitab a1 Buyu'", a1so Mus1im, Tirmizi, Nasa'i and Musnad Ahmad; translation by M. Umer Chapra, ibid.

hand," if the commodities differ, then you may sell as you wish, provided that the exchange is hand-to-hand".[36]

5.4 Explanation about the *Riba* Prohibited in the Sunnah

The *riba* which is prohibited in the *Sunnah*, especially in the category of *riba al fadl*, is subject to some controversies.

M. Abu Zahrah[37] commented that *riba al.fadl* which is also known as *riba al buyu'* (*riba* which is not based on loans, but on contracts) is a debatable type of *riba*. This may becaused by the fact that such *riba* was not known to the Arabs before the advent of Islam. He quoted Abu Bakr al Razi saying in his book *Ahkam al Quran* that" Arabs did not know that trading gold for gold and silver for silver *nasa'ah* (deferred) is *riba*, whereas, it is *riba* according to Islamic Law. [38]

In fact, *riba al buyu'* was not clearly defined even in the understanding of the companions. For example, Abdullah bin Mas'ud was reported to have sold 8ome discarded items of *Bayt al Mal* until he. was told that such action was prohibited by the Prophet. After knowing exactly what the Prophet had said, he addressed the treasurers, *"O treasurers! What I have sold you was unlawful, since selling silver is lawful only if it is weight for same weight. "*[39]

In addition, Ibn Abbas was reported to have given *fatwa* or legal opinion that there is no *riba* except *riba al nasi'ah, that* is *riba al jahli*. Ibn Abbas was followed by other companions such as Usamah bin Zaid, Zaid bin Arqam, Abdullah bin al Zubair and Sa'id bin Jubair. They based their legal opinion on the previously mentioned hadith on the authority of Usamah bin Zaid which reads to the effect: *" There is no riba except in al nasi'ah".*[40]

On the other hand, the *ahadith* regarding the six commodities which

---

36. Muslim, "Kitab a1 Musaqat", a1so in Tirmizi: translation by M. Umer Chapra, ibid.
37. Abu Zahrah. op. cit. p. 45.
38. Ibid.
39. S. Hassan Hammoud, op. cit. p. 179.
40. Abd al Mun'im Mahrnud al Qusi, op. cit. p. 145.

are subjected to *riba al fadl* were traced to a large number of companions such as the four guided caliphs, Ubadah bin al Samit, Abu Said al Khudri, Abu Hurairah and many other companions, among whom were seven of the most trusted companions of the Prophet. The narration, which is regarded as the most authoritative, is the one narrated by at Bukhari and Muslim on the authority of Ubadah bin al Samit, because of its completeness.[41]

Muslim jurists deduce from these *ahadith* the following rules which govern *riba al fadl*:

(a) In trading commodities of the same group and kind, such as gold for gold or dates for dates; two conditions must be fulfilled, i.e.:
  - both commodities must be exactly equivalent;
  - there must be prompt delivery.

(b) In trading commodities of the same group but of different kinds, such as gold for silver, or wheat for barley; there is only one condition, i.e. the promptness in delivery; equality is not a condition.

(c) In trading commodities of different groups and kinds, such as gold for wheat, or silver for barley; no condition is imposed and free trading can exist, whether there is equality, inequality, promptness, or delay.[42]

From the above narrations, we can conclude that *riba al fadl* was not exactly known to some of the companions, and often misunderstood by them. Because of that, this type of *riba* is subjected to many interpretations by later jurists, and such different interpretations will be dealt with in the following discussion.

41. Ibid.
42. Ibid. p. 146.

6.0 *RIBA* IN *FIQH*

6.1 Meaning and Types of *Riba*

Riba in *fiqh* terminology means an increase in one of two homogenous equivalents being exchanged without this increase being accompanied by a return. Basically, the *fuqaha'* classified riba into two main categories, namely:

- *riba al nasiah;*
- *riba al fadl.*

Riba al nasiah occurs when the specified increase is in return for postponement of, or waiting for, the payment. *Riba al fadl* occurs when the increase mentioned is irrespective of the postponement and is not offset by something in return.

There is no difference among the Muslim jurists about the prohibition of *riba al nasiah*. It is indisputably one of the major sins which is decisively banned by the clear texts of the *Shari'ah* and approved by the consensus of the *ummah*.

Riba al fadl is prohibited in the four schools of jurisprudence. However, it was reported to have been allowed by some companions of the Prophet, such as Abdullah bin Abbas, as had been mentioned earlier in this study. Nevertheless, it is reported that Ibn Abbas recanted his opinion afterwards and talked about the prohibition of *riba al fadl*.

Riba al Fadl does not have substantial effect on transactions because of the rarity of its occurrence. It is not the objective of people to buy or sell one thing in exchange for the same thing unless there is something extra from which each of the party may benefit. Notwithstanding this, it has been prohibited because it might lead to the defrauding of less sophisticated persons. For example, a trader may claim that a quantity of a specific brand of wheat is equivalent of the other brands because of the excellence of its quality or, a unique

piece of gold ornament is equivalent in value to twice its weight in gold. Such transactions are undoubtedly defrauding to the ignorant party and may cause harm to them.[43]

In connection to the categories of *riba*, Ibn Qayyim made an outstanding categorisation where he divided *riba* into obvious (*jalliyy*) and concealed (khafiyy). The obvious *riba* (which is basically *riba al nasiah*) is prohibited because it causes great harm and injustices. On the other hand, the concealed *riba* (which is basically *riba al fadl*) is prohibited because it is a means to the obvious *riba*. The prohibition of the first is a prohibition of purpose, while the prohibition of the second is a prohibition of means.[44]

The *Quran* in prohibiting *riba* does not differentiate between its types: whether it is *nasiah* or *fadl*. Therefore, we may say that the prohibition of *riba* in general is agreed upon by all Muslim jurists and scholars. However, there is disagreement among them in relation to the kinds of transactions which may be said to come within the ambit of the unlawful *riba*. This is because the *ahadith* which dealt with riba opened the door to more deductions, thus creating different views in the *fiqh* concerning *riba.*

6.2 Differences Regarding *Riba al Fadl*

Regarding the *hadith* of the six kinds, the jurists differ whether *riba* be limited to the six kinds only, or, can these kinds be extended to other commodities if the share the same characteristics.

Some jurists especially from the Zahiri school are of the first view, and thus, called for limiting the *rabawiyyat* into six kinds only. However, most of the jurists called for widening the ambit of al riba to include other kinds which share some common characteristics. According to

43. Abd, Rahman al Jaziri, " Al Fiqh ' ala al Mazahib al Arba'ah", Dar al Fikr, Beirut, Vol. 2 p.p. 245-248.
44. Ibn Qayyim, "I'lam a1 Muwaqqi'n", op. cit. Vol. II, p. 99.

the latter view, any other kind which can be ruled by the same *'illah* with the *'illah* present in the six kinds is considered to be rabawi, based on the existence or non-existence of the said 'illah.[45]

The jurists who viewed that the six kinds can be extended to other kinds if they share a common 'illah further differ in determining the 'illah commodity which can be subjected to weighing can be categorised as *rabawi,* and thus, must follow the rules regarding equality and promptness in order to avoid the occurrence of riba al.fadl in its exchange or trading. .Among those who favour this opinion are the Hanaf1S, Ahmad bin Hanbal, At Nakha'ie, At Zuhri, At Thauri and Ishaq. In the Shi'ite schools, the Imamis, Zaydis and Ja'faris accepted this opinion.[46] The 'illah of weight is

criticised because now people use paper money which is weightless. Yet, it is unacceptable to consider them non-rabawi.[47]

Another group differentiates the *'illah* of gold and silver from the other items mentioned in the *hadith*. The Malikis and Shafiis for example, viewed that the *'illah* for gold and silver is the *naqdiyyah (currency) i.e. they are the accepted currency in use.[48]* In this connection Ibn Taymiyyah says in his "Fatawa":

"The topic here is 'illat of riba in dinars and dirhams. The most accepted 'illah is al thamaniyyah (price) and not weight as is indicated by most scholars ...al thamaniyyah as reasoning is suitable in this connection because gold and silver are intended to be standards for measuring al amwal (property),and not to be utilised as such (i.e. they should not be used freely as other kinds of properties or amwal.[49]

When they are exchanged for a stipulated due date, then it is meant

45. Abd. Al Mun'im Mahmud al Qusi, op. cit. p. 189 46
46. Ibid. p. 160
47. Ibid.
48. Abd. Rahman al Jaziri, op. cit. p.p. 250-251
49. The explanation is the writer's

for trade in themselves, which is against the objective of *al thamaniyyah*. The stipulation of instant delivery and acceptance is to integrate its objectives in order to attain one's pursuits which occur only when it is delivered and collected, but not when it is established as a debt. For this reason the *Shari'ah* prohibited selling one of them (gold and silver) for another for deferred delivery .So, if *fulus* (a type of currency) become the prices, they become so under the previous definition and their exchanges must abide with the rules mentioned before”.[50]

Based on this *‘illah*, all items that are utilised as mediums of exchange and a measure of value can fall under the prohibition of *riba*. It appears that this is the more correct '*illah*, because, the injustice (*zulm*) which is considered to be a reason for the prohibition of *riba* in the exchange of gold and silver also exists in the exchange of paper money and coins. Thus, the concept of *al thamaniyyah* in relation to *illah* of riba in gold and silver is the most appropriate to include modern day’s currencies and transactions.[51]

In relation to the other items mentioned in the *hadith*, the jurists differ in determining their *‘illah*. The Hanafis maintained that the *'illah* in prohibiting them is their capacity to be measured or weighed. The Malikis say that the *'illah* is the fact that all these items are storable food provisions. The Shaftis and Hanbalis are of a similar opinion with that of the Malikis except that they consider edibleness as the *'illah* for the prohibition, not so much on whether such food is storable or non-storable.[52]

The more appropriate view is that of the Shafiis and Hanbalis, i.e. the edibleness of the item without making storability a condition, because

50. Ibn Taymiyyah, “Majmu’ al Fatawa li Ibn Taymiyyah”, Matabi’ al Riyadh, Riyadh, 1383 (H), XXIX, p. 474.
51. See the view of Abd. Al Mun’im Mahmud al Qusi, oip. Cit. p. 162.
52. Abu Zahrah, op. cit.p. 28.

it covers a wider range of items. Moreover, the advanced technology in preserving many types of food" for long periods almost defeat the condition of storability made by the Malikis. The *'illah* of weight is not preferable because it can be applied to a very limited type of items only.[53] In this connection, Abd. Razzaq al Sanhuri says:

"Some scholars say, if we study these views carefully we find that the consideration regarded by the Shafiis is a socio-economic one which, they say, is the essence of the subject.regarded by the Hanafis is not the essence of the subject. That is the main reason why those jurists did not hesitate in adopting the Shafiis' view."[54]

6.3 The Wisdom behind the Prohibition of *Riba*

The Muslim jurists also discussed the wisdom behind the prohibition of *riba*. Generally, it can be summarised as the elimination of injustice and the call for cooperation. The Muslim jurists also discussed the wisdom behind the prohibition of *riba* in the spirit of brotherhood. Regarding *riba al fadl* specifically, the wisdom is the call for the other hand, the consideration the transition of societies from the primitive barter system to a monetary system. This is because money, as a perfect measure of value and medium of exchange, maintains the accomplishment of exchanges on a fair basis where fraud is reduced. This may be evidenced by a *hadith* which reads to the effect:

"From Abu Said: Bilal brought to the Prophet s.a.w. some 'barni' (good quality) dates whereupon the Prophet asked him where these were from. Bilal replied; I had some inferior dates which I exchanged for these – two sa's for a sa'." The Prophet said, "Oh no, this is exactly riba. Do not do so, but when you wish to buy, sell the inferior dates against something (cash) and then buy the better dates with the price you receive."[55]

53. Abd. al Mun'im Mahmud al Qusi, op. cit. p. 165.
54. Abd. Razzaq al Sanhuri, "Masadjr al Haqq fi al Fiqh al Islami", Vol. 3, p. 184; quoted by Abd. a1 Mun'im Mahmud al Qusi ibid.

6.4 Some Controversies on the Prohibition of *Riba*

It should also be noted that there are some contemporary Muslim jurists who called for narrowing the scope of *riba* so as to exclude tile interest rate. They might be influenced by the contemporary socio-economic scene affecting the Muslim community.. Three theories may be identified in this respect.[56]

Firstly, is the theory which confines *riba al jahili* to doubled and multiplied interest prohibited, whilst, simple *riba* which is stipulated in the first contract of debt before the due date is over is not included in the prohibited type. This theory had been criticised by other Muslim jurists and proven to be faulty, especially in view of the clear intent of the *Quranic ayah* in *al Baqarah*: 279 which decisively say that the creditor is only entitled to the principal amount given on loan.

Secondly is the theory of comprehensive public need, whereby, its propounders talk about *al hajah* (need) to justify the category of *riba* which is precautionarily prohibited and this includes the interest rate. This theory had also been rebutted by other Muslim jurists mainly because its propounders did not define correctly the *riba* which is purposely prohibited and the *riba* which is precautionarily prohibited, thus, the question of the existence of *al hajah* to justify the permissibility of interest rate becomes irrelevant.

The third theory is the theory of *dharurah* (necessity) and changing circumstances, in which, its propounders claimed that *riba* is only prohibited on consumption loans and not production loans. Thus, because of necessity and changing circumstances, interest rate becomes permissible. This has also been proven to be faulty because historically, the practice of giving loans for production was common since *jahiliyyah* and thus, is included in the prohibited *riba al jahili*. Also, the idea of necessity which the propounders of this theory tried

55. Muslim, "Kitab al Musaqat". also Musnad Ahmad; Translation by M. Umer Chapra, op. cit. p. 239.

to build is inconceivable since necessity cannot be imagined to dominate the whole system, as Abu Zahrah says:
"…necessity is only found in individuals, because if not, then it means that the whole society needs al riba like the need of a starving person to eat the dead…"

This has also been proven to be faulty because historically, the *"...necessity is only found in individuals, because if not, then it means that the whole society needs al riba like the need of a starving person to eat the dead..."*[57]

7.0 CONCLUSION

From the foregoing discussion, it is clear that *al riba* is prohibited in Islamic Law. This is evidenced by the clear texts of the *Quran, Sunnah* and juristic opinions.

It is also clear that the prohibited *riba* includes the interest imposed on bank loans and given on deposits by the banks as had been declared in the Pakistani case referred to in the introduction of this chapter, whereby, the learned judge concluded his discussion on the prohibition of *riba* by saying :
"In view of the above discussion, we are of the firm view that the interest charged on loans and given on deposits by the banks falls within the definition of Riba and that it makes no difference whether the loan is taken for consumption purpose or for productive purpose, i.e., for trade, commerce and industry. "[58]

Thus, in determining whether the Islamic bank conforms to the precepts of Islamic Law, the most important element to be eliminated is the element of *riba*. With the, elimination of *riba*, all forms of exploitation will be eliminated,

56. Reference for the theories is made to Abd. Al Mun'im Mahmud al Qusi, op. cit. p.p. 171-190.
57. Abu Zahrah, "Buhuth fi al Riba", p.p. 61-62; quoted by Abd. at Mun'im Mahmud al Qusi, op. cit. p. 186.
58. Mahmood ur Rahman Faisal v Secv. Miny. of Law, op. cit. at p. 90.

especially in the form of the financier being assured of a positive return without doing any work or sharing any risk, while the entrepreneur, in spite of his management and hard work, is not assured of such a positive return.

Based on the above discussion, it is difficult to see how anyone could justify interest in an Islamic social system. The difficulty to understand the prohibition comes from lack of appreciation of Islamic values, particularly its uncompromising emphasis on socio-economic justice and equitable distribution of income and wealth.